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EXAMINER	
CHANDLER, SARA M	

ART UNIT	PAPER NUMBER
3693	

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/480,991	CUSHING, DAVID	
	Examiner	Art Unit	
	Sara Chandler	3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 October 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6-13,15-27 and 29-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,6-13,15-27 and 29-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This Office Action is responsive to Applicant's arguments and request for reconsideration of application 09/480,000 (January 11, 2000) filed on 10/10/06.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4, 6-13, 15-27 and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over May, US Pat. No. 6,421,653 in view of Madoff, US Pat. No. 7,099,839.

Claim 1 May discloses a method for conducting a financial batch auction after a first period and before a second period, comprising the steps of:

receiving during an order acceptance period orders from a plurality of participants, said orders representing a desire to execute a trade regarding a security (col. 16, line 30-col. 17, line 20);

continuously transmitting to said participants information regarding orders as they are received during said order acceptance period (col. 7, lines 7-43);

allowing said participants during said order acceptance period to modify previously submitted orders only if the modification meets a predetermined set of conditions (see orders in the queued order window can be edited, col. 43, lines 40-44; active orders, col. 33, lines 39-42; price adjusting, col. 31, lines 16-34; adjusting quantities, col. 36, lines 38-42; active orders and changing orders, col. 37, line 13-36; canceling orders, col. 38, lines 1-67, especially lines 1-14, and modifying, col. 38, lines 64-66; col. 4, line 63- col. 5, line 10; col. 18, line 18-col. 19, line 7);

prohibiting the receiving of orders after said order acceptance period (col. 4, line 58 - col. line 10 it is inherent, in auction systems, to have a predefined bidding period);

discovering an optimal price at which a maximum number of shares will be executed based on all orders received during said order acceptance period (finding price at which the most volume is traded, col. 43, lines 50-62; best prices, col. 35, lines 6-9; col. 37, lines 13-36; 302, Fig.15; col. lines 12-27);

executing a trade of said maximum number of shares at said optimal price (col. 37, line 45-col. 39, line 29);

May fails to explicitly disclose a method for conducting a financial batch auction before the opening or after the closing of a mark comprising the steps of:

allocating a portion of said executed maximum number of shares to each of the participants based on the participants qualified orders, wherein said portion is less than a size of the participants order;

wherein said predetermined set of conditions include at least one of an aggressiveness criteria or an net order imbalance criteria.

Madoff discloses a method for conducting a financial batch auction before the opening or after the closing of a market (Madoff, abstract, Figs. 2A-C, 3A-C, 4,5; col. 1, line 1- col. 2, line 50; col. 4, lines 11-16; col. 5, line 40+ - col. 10, line 22; col. 10 , line 52 - col. 11, line 5), comprising the steps of:

allocating a portion of said executed maximum number of shares to each of the participants based on the participants qualified orders, wherein said portion is less than a size of the participants order (Madoff, abstract, Figs. 2A-C, 3A-C, 4,5; col. 1, lines 40-57; col. 6, lines 31+ - col. 7, lines 8; col. 7, lines 55- col. 8, line 6; col. 8, lines 61 – col. 9, line 26);

wherein said predetermined set of conditions include at least one of an aggressiveness criteria or an net order imbalance criteria (Madoff, abstract, Figs. 2A-C, 3A-C, 4,5; col. 1, lines 1- col. 2, lines 21; col. 5, line 5+ - col. 7, line 8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of May by adopting the teachings of Madoff to provide a method for conducting a financial batch auction before the opening or after the closing of a mark comprising the steps of: receiving during an order acceptance period orders from participants, said orders representing a desire to execute a trade

regarding a security on said market; continuously transmitting to said participants information regarding orders as they are received during said order acceptance period; allowing said participants during said order acceptance period to modify previously submitted orders only if the modification meets a predetermined set of conditions; prohibiting the receiving of orders after said order acceptance period; discovering an optimal price at which a maximum number of shares will be executed based on all orders received during said order acceptance period; and executing a trade of said maximum number of shares at said optimal price; and allocating a portion of said executed maximum number of shares to each of the participants based on the participants qualified orders, wherein said portion is less than a size of the participants order; wherein said predetermined set of conditions include at least one of an aggressiveness criteria or an net order imbalance criteria.

As suggested by Madoff, one would have been motivated to avoid excess volatility; remove existing execution price variations owing to where and when orders are sent while mutualizing imbalances among market makers; and creating an efficient mechanism that is fair to all participants.

Claim 2 May discloses a method for conducting a financial batch auction according to claim 1, wherein said orders include parameters describing a trade side, a security identifier, and a quantity of shares (Fig.7).

Claim 3 May discloses a method for conducting a financial batch auction according to claim 1, wherein said orders have order types selected from the group consisting of unpriced orders, priced orders, and cross orders (620, 672,684).

Claim 4 May discloses a method for conducting a financial batch auction according to claim 1, wherein the batch auction is conducted concurrently with a continuous trading financial market for said security (abstract).

Claim 6 May discloses a method for conducting a financial batch auction according to claim 1, wherein said information transmitted to said qualified recipients comprises an indicated price and a net order imbalance for said security (it is inherent in a financial batch auction to transmit information to qualified recipients for either an indicated price or a net order imbalance).

Claim 7 May discloses a method for conducting a financial batch auction according to claim 1, wherein modification of previously submitted orders includes requests to cancel orders and requests to modify quantity and/or price of orders (see orders in the queued order window can be edited, col. 43, lines 40-44;

active orders, col. 33, lines 39-42; price adjusting, col. 31, lines 16-34; adjusting quantities, col. 36, lines 38-42; active orders and changing orders, col. 37, line 13-36; canceling orders, col. 38, lines 1-67, especially lines 1-14, and modifying, col. 38, lines 64-66; col. 4, line 63- col. 5, line 10; col. 18, line 18-col. 19, line 7).

Claim 8 May discloses a method for conducting a financial batch auction according to claim 7, wherein receiving of requests to cancel orders is terminated at a predetermined time before the end of said order acceptance period (see settlement module 42).

Claim 9 May discloses a method for conducting a financial batch auction, wherein said allocating step includes a step of distributing said executed maximum number of shares pro-rata among orders that qualify for execution (42).

Claim 10 May discloses a method of performing a batch auction of a security, comprising the steps of:

compiling an order book, wherein said compiling comprises receiving order information from participants during an order acceptance period, entering orders into the order book, and modifying or canceling orders within the order book in response to modification requests received from participants based upon order information provided to said participants during said order acceptance period, where said modification requests satisfy a plurality of predetermined conditions (col. 16, line 30-col. 17, line 20; col. 7, lines 7-43; (see orders in the queued order window can be edited, col. 43, lines 40-44; active orders, col. 33, lines 39-42; price adjusting, col. 31, lines 16-34; adjusting quantities, col. 36, lines 38-42; active orders and changing orders, col. 37, line 13-36; canceling orders, col. 38, lines 1-67, especially lines 1-14, and modifying, col. 38, lines 64-66; col. 4, line 63- col. 5, line 10; col. 18, line 18-col. 19, line 7));

discovering an optimal price, wherein said discovering step comprises identifying one or more prices at which the batch auction would produce a maximum number of executed shares, and selecting one of said one or more prices as an optimal price (finding price at which the most volume is traded, col. 43, lines 50-62; best prices, col. 35, lines 6-9; col. 37, lines 13-36; 302, Fig.15; col. lines 12-27); and

executing the batch auction at the said executing step comprises crossing orders within the order book at the optimal price (col. 37, line 45-col. 39, line 29).

May fails to explicitly disclose a method comprising steps:

wherein the order acceptance period is before the opening or after the closing of a market on which said security is to be traded;

allocating a portion of the orders crossed to each of said participants, said portion being less than a size of the participants order;

wherein said plurality of predetermined conditions include at least one of an aggressiveness criteria or an net order imbalance criteria.

Madoff discloses a method comprising the steps:

wherein the order acceptance period is before the opening or after the closing of a market on which said security is to be traded (Madoff, abstract, Figs. 2A-C, 3A-C, 4,5; col. 1, line 1- col. 2, line 50; col. 4, lines 11-16; col. 5, line 40+ - col. 10, line 22; col. 10 , line 52 - col. 11, line 5);

allocating a portion of the orders crossed to each of said participants, said portion being less than a size of the participants order (Madoff, abstract, Figs. 2A-C, 3A-C, 4,5; col. 1, lines 40-57; col. 6, lines 31+ - col. 7, lines 8; col. 7, lines 55- col. 8, line 6; col. 8, lines 61 – col. 9, line 26);

wherein said plurality of predetermined conditions include at least one of an aggressiveness criteria or an net order imbalance criteria (Madoff, abstract, Figs. 2A-C, 3A-C, 4,5; col. 1, lines 1- col. 2, lines 21; col. 5, line 5+ - col. 7, line 8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of May by adopting the teachings of Madoff to provide a method of performing a batch auction of a security, comprising the steps of: compiling an order book, wherein said compiling comprises receiving order information from participants during an order acceptance period before the opening or after the closin.q of a market on which said security is to be traded, entering orders into the order book, and modifying or canceling orders within the order book in response to modification requests received from participants based upon order information provided to said participants during said order acceptance period, where said modification requests satisfy a plurality of predetermined conditions; discovering an optimal price, wherein said discovering step comprises identifying one or more prices at which the batch auction would produce a maximum number of executed shares, and selecting one of said one or more prices as an optimal price; executing the batch auction at the optimal price, wherein said executing step comprises crossing orders within the order book at the optimal price; and allocating a portion of the orders crossed to each of said participants, said portion being less than a size of the participants order; wherein said plurality of predetermined conditions include at least one of an aggressiveness criteria or an net order imbalance criteria.

As suggested by Madoff, one would have been motivated to avoid excess volatility; remove existing execution price variations owing to where and when orders are sent while mutualizing imbalances among market makers; and creating an efficient mechanism that is fair to all participants.

Claims 11-13 and 15-19 contain features or limitations recited in Claims 1-4, 6-9 and 10 and are rejected under the same rationale.

Claim 20 May computerized system for performing a batch auction of a security, comprising:

a computerized network having at least two computers in electronic communication with each other (col. 5, lines 48-55; col. 6, lines 31-34);

an order receiving program running on one or more of said computers, wherein said receiving program is designed to receive a plurality of messages containing orders and modifications of prior orders from a plurality of participants during an order acceptance period, and to accept only those orders and modifications of prior orders that meet a set of predetermined criteria (col. 5, lines 48-55; col. 16, line 30-col. 17, line 20; col. 5, lines 48-55);

an order book database located on one or more of said computers, wherein said order book database communicates with said order receiving program and stores each of said accepted orders received by said receiving program (col. 5, lines 48-55; col. 16, line 30-col. 17, line 20; col. 5, lines 48-55, communication between programs and storing information is inherent to the compute network);

a price discovery program running on one or more of said computers, wherein said price discovery program calculates an optimal price upon which to transact a maximum number of shares of the security during the batch auction based on order

information stored in said order book database (col. 5, lines 48-55; finding price at which the most volume is traded, col. 43, lines 50-62; best prices, col. 35, lines 6-9; col. 37, lines 13-36; 302, Fig.15; col. lines 12-27);

a batch auction execution program running on one or more of said computers, wherein said execution program executes the batch auction of said maximum number of shares of the security at a predetermined execution time (col. 5, 48-55; col. 37, line 45-col. 39, line 29); and

a notification program running on one or more of said computers, wherein said notification program publishes a predetermined selection of data from said order book database during said order acceptance period, and wherein said notification program notifies said participants of said published selection of data during said order acceptance period (col. 5, 48-55, inherent to method, system, program for conducting auctions is a means to notify participants of selected data, it is necessary to aid users in decision making).

May fails to explicitly disclose a method comprising:

wherein said execution program allocates a maximum number of shares pro-rata among said accepted orders;

wherein said set of predetermined criteria include at least one of an aggressiveness criteria or an net order imbalance criteria.

Madoff discloses a method comprising:

wherein said execution program allocates a maximum number of shares pro-rata among said accepted orders (Madoff, abstract, Figs. 2A-C, 3A-C, 4,5; col. 1, lines 40-

57; col. 6, lines 31+ - col. 7, lines 8; col. 7, lines 55- col. 8, line 6; col. 8, lines 61 – col. 9, line 26);

wherein said set of predetermined criteria include at least one of an aggressiveness criteria or an net order imbalance criteria (Madoff, abstract, Figs. 2A-C, 3A-C, 4,5; col. 1, lines 1- col. 2, lines 21; col. 5, line 5+ - col. 7, line 8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of May by adopting the teachings of Madoff to provide a computerized method for performing a batch auction of a security, comprising: a computerized network having at least two computers in electronic communication with each other; an order receiving program running on one or more of said computers, wherein said receiving program is designed to receive a plurality of messages containing orders and modifications of prior orders from a plurality of participants during an order acceptance period, and to accept only those orders and modifications of prior orders that meet a set of predetermined criteria; an order book database located on one or more of said computers, wherein said order book database communicates with said order receiving program and stores each of said accepted orders received by said receiving program; a price discovery program running on one or more of said computers, wherein said price discovery program calculates an optimal price upon which to transact a maximum number of shares of the security during the batch auction based on order information stored in said order book database; a batch auction execution program running on one or more of said computers, wherein said execution program executes the batch auction of said maximum number of shares of

the security at a predetermined execution time; and a notification program running on one or more of said computers, wherein said notification program publishes a predetermined selection of data from said order book database during said order acceptance period, and wherein said notification program notifies said participants of said published selection of data during said order acceptance period; wherein said execution program allocates a maximum number of shares pro-rata among said accepted orders; wherein said set of predetermined criteria include at least one of an aggressiveness criteria or an net order imbalance criteria.

As suggested by Madoff, one would have been motivated to avoid excess volatility; remove existing execution price variations owing to where and when orders are sent while mutualizing imbalances among market makers; and creating an efficient mechanism that is fair to all participants.

Claims 21-27 and 29 contain features or limitations recited in Claims 1-4, 6-9 and 20 and are rejected under the same rationale.

Claim 30 May discloses a method for conducting a security batch auction cycle, said auction cycle having an order acceptance period, a price discovery period, and an order execution period, said method comprising the steps of:

during a first of two stages of said order acceptance period (col. 5, lines 37-39; col. 6, lines 16-21 and 57-61; col. 7, lines 26-27 and 32-34. The reference to the processing of trades initiated by users is comparable to accepting a request to enter, modify or cancel an order from a user):

accepting requests to enter auction orders into an order book, to modify auction orders within the order book, and to cancel auction orders within the order book (col. 5, lines 37-39; col. 6, lines 16-21 and 57-61; col. 7, lines 26-27 and 32-34., see above); and selecting data from said order book; and publishing said selected data to a plurality of recipients (516);

during the second stage of said order acceptance: period (col. 5, lines 37-39; col. 6, lines 16-21 and 57-61; col. 7, lines 26-27 and 32-34, May discusses the flexible control of outstanding and executed orders. In an auction setting mechanism for accepting late requests, or modified auction orders would be foreseeable circumstances within the "flexible control" of the invention. May also accounts for circumstances in which more than one user may engage in the auction cycle.):

accepting late requests to enter auction orders into the order book if said late requests to enter meet a first set of criteria (col. 5, lines 37-39; col. 6, lines 16-21 and 57-61; col. 7, lines 26-27 and 32-34, see above);

accepting late requests to modify orders within the order book if said late requests to modify meet a second set of criteria (col. 5, lines 37-39; col. 6, lines 16-21 and 57-61; col. 7, lines 26-27 and 32-34, see above); and

publishing said selected data within said order book to said plurality of recipients (516);

during said price discovery period (finding price at which the most volume is traded, col. 43, lines 50-62; best prices, col. 35, lines 6-9; col. 37, lines 13-36; 302, Fig.15; col. lines 12-27):

identifying one or more prices at which the batch auction cycle would produce a maximum number of executed shares, and selecting one of said one or more prices as an optimal price (finding price at which the most volume is traded, col. 43, lines 50-62; best prices, col. 35, lines 6-9; col. 37, lines 13-36; 302, Fig.15; col. lines 12-27); and during said order execution period (col. 37, line 45-col. 39, line 29; col. 5, lines 37-39; col. 6, lines 16-21 and 57-61; col. 7, lines 26-27 and 32-34):

executing a trade of said maximum number of shares at said optimal price (col. 37, line 45-col. 39, line 29; col. 5, lines 37-39; col. 6, lines 16-21 and 57-61; col. 7, lines 26-27 and 32-34).

May fails to explicitly disclose a method comprising the steps of:

allocating said maximum number of shares among said participants on a pro rata basis;

wherein said first and second set of criteria include at least one of aggressiveness criteria and a net order imbalance criteria.

Madoff discloses a method comprising the steps of:

allocating said maximum number of shares among said participants on a pro rata basis (Madoff, abstract, Figs. 2A-C, 3A-C, 4,5; col. 1, lines 40-57; col. 6, lines 31+ - col. 7, lines 8; col. 7, lines 55- col. 8, line 6; col. 8, lines 61 – col. 9, line 26);

wherein said first and second set of criteria include at least one of aggressiveness criteria and a net order imbalance criteria (Madoff, abstract, Figs. 2A-C, 3A-C, 4,5; col. 1, lines 1- col. 2, lines 21; col. 5, line 5+ - col. 7, line 8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of May by adopting the teachings of Madoff

to provide a method for conducting a security batch auction cycle, said auction cycle having an order acceptance period, a price discovery period, and an order execution period, said method comprising the steps of: during a first of two stages of said order acceptance period: accepting requests to enter auction orders into an order book, to modify auction orders within the order book, and to cancel auction orders within the order book; and selecting data from said order book, and publishing said selected data to a plurality of recipients; during the second stage of said order acceptance period: accepting late requests to enter auction orders into the order book if said late requests to enter meet a first set of criteria; accepting late requests to modify orders within the order book if said late requests to modify meet a second set of criteria; and publishing said selected data within said order book to said plurality of recipients; during said price discovery period: identifying one or more prices at which the batch auction cycle would produce a maximum number of executed shares, and selecting one of said one or more prices as an optimal price; and during said order execution period: executing a trade of said maximum number of shares at said optimal price; and allocating said maximum number of shares among said participants on a pro rata basis; wherein said first and second set of criteria include at least one of an aggressiveness criteria and a net order imbalance criteria.

As suggested by Madoff, one would have been motivated to avoid excess volatility; remove existing execution price variations owing to where and when orders are sent while mutualizing imbalances among market makers; and creating an efficient mechanism that is fair to all participants.

Claim 31 May discloses a method of performing an intermediated batch auction of a security, comprising the steps of

receiving a plurality of orders from a plurality of participants during an order acceptance period, each of said orders identifying a desire to trade shares of the security (col. 16, line 30-col. 17, line 20);

providing information to an intermediary regarding said plurality of orders during said order acceptance period, and accepting orders from said intermediary identifying a desire to trade an excess number of shares based on said information (col. 7, lines 7-43);

discovering an optimal price at which a maximum number of said shares identified by said plurality of orders will be executed (finding price at which the most volume is traded, col. 43, lines 50-62; best prices, col. 35, lines 6-9; col. 37, lines 13-36; 302, Fig.15; col. lines 12-27); and

executing a trade of said maximum number of shares and said excess number of shares at said optimal price (col. 37, line 45-col. 39, line 29).

May fails to explicitly disclose a method comprising the steps of:

allocating said maximum number of shares among said participants on a pro rata basis; wherein said plurality of orders may include one or more modified orders and said providing step includes a step of determining whether said modified orders meet at least one of an aggressiveness criteria and a net order imbalance criteria and prohibiting said modified orders that do not meet at least one of an aggressiveness criteria and a net order imbalance criteria from being provided to said intermediary.

Madoff discloses a method comprising the steps of:

allocating said maximum number of shares among said participants on a pro rata basis (Madoff, abstract, Figs. 2A-C, 3A-C, 4,5; col. 1, lines 40-57; col. 6, lines 31+ - col. 7, lines 8; col. 7, lines 55- col. 8, line 6; col. 8, lines 61 – col. 9, line 26);

wherein said plurality of orders may include one or more modified orders and said providing step includes a step of determining whether said modified orders meet at least one of an aggressiveness criteria and a net order imbalance criteria and prohibiting said modified orders that do not meet at least one of an aggressiveness criteria and a net order imbalance criteria from being provided to said intermediary (Madoff, abstract, Figs. 2A-C, 3A-C, 4,5; col. 1, lines 1- col. 2, lines 21; col. 5, line 5+ - col. 7, line 8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of May by adopting the teachings of Madoff to provide a method of performing an intermediated batch auction of a security, comprising the steps of: receiving a plurality of orders from a plurality of participants during an order acceptance period, each of said orders identifying a desire to trade shares of the security; providing information to an intermediary regarding said plurality of orders during said order acceptance period, and accepting orders from said intermediary identifying a desire to trade an excess number of shares based on said information; discovering an optimal price at which a maximum number of said shares identified by said plurality of orders will be executed; and executing a trade of said maximum number of shares and said excess number of shares at said optimal price; and allocating said maximum number of shares among said participants on a pro rata

basis; wherein said plurality of orders may include one or more modified orders and said providing step includes a step of determining whether said modified orders meet at least one of an aggressiveness criteria and a net order imbalance criteria and prohibiting said modified orders that do not meet at least one of an aggressiveness criteria and a net order imbalance criteria from being provided to said intermediary.

As suggested by Madoff, one would have been motivated to avoid excess volatility; remove existing execution price variations owing to where and when orders are sent while mutualizing imbalances among market makers; and creating an efficient mechanism that is fair to all participants.

Re Claim 32: May discloses a method comprising the steps of:

receiving during an order acceptance period orders from participants, said orders representing a desire to execute a trade regarding a security on said market (col. 16, line 30-col. 17, line 20);

continuously transmitting to said participants information including an indicated price and a net order imbalance relating to the orders as they are received during said order acceptance period (col. 7, lines 7-43);

allowing said participants during said order acceptance period to modify previously submitted orders only if the modification meets a predetermined set of conditions (see orders in the queued order window can be edited, col. 43, lines 40-44;

active orders, col. 33, lines 39-42; price adjusting, col. 31, lines 16-34; adjusting quantities, col. 36, lines 38-42; active orders and changing orders, col. 37, line 13-36;

canceling orders, col. 38, lines 1-67, especially lines 1-14, and modifying, col. 38, lines 64-66; col. 4, line 63- col. 5, line 10; col. 18, line 18-col. 19, line 7);

prohibiting the receiving of orders after said order acceptance period (col. 4, line 58 - col. line 10 it is inherent, in auction systems, to have a predefined bidding period);

discovering an optimal price at which a maximum number of shares will be executed based on all orders received during said order acceptance period (finding price at which the most volume is traded, col. 43, lines 50-62; best prices, col. 35, lines 6-9; col. 37, lines 13-36; 302, Fig.15; col. lines 12-27); and

executing a trade of said maximum number of shares at said optimal price (col. 37, line 45-col. 39, line 29).

May fails to explicitly disclose wherein the method is a method for conducting a financial batch auction before the opening or after the closing of a market.

Madoff disclose a wherein the method is a method for conducting a financial batch auction before the opening or after the closing of a market (Madoff, abstract, Figs. 2A-C, 3A-C, 4,5; col. 1, line 1- col. 2, line 50; col. 4, lines 11-16; col. 5, line 40+ - col. 10, line 22; col. 10 , line 52 - col. 11, line 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of May by adopting the teachings of Madoff to provide a method for conducting a financial batch auction before the opening or after the closing of a market, comprising the steps of: receiving during an order acceptance period orders from participants, said orders representing a desire to execute a trade regarding a security on said market; continuously transmitting to said participants

information including an indicated price and a net order imbalance relating to the orders as they are received during said order acceptance period; allowing said participants during said order acceptance period to modify previously submitted orders only if the modification meets a predetermined set of conditions; prohibiting the receiving of orders after said order acceptance period; discovering an optimal price at which a maximum number of shares will be executed based on all orders received during said order acceptance period; and executing a trade of said maximum number of shares at said optimal price.

As suggested by Madoff, one would have been motivated to avoid excess volatility; remove existing execution price variations owing to where and when orders are sent while mutualizing imbalances among market makers; and creating an efficient mechanism that is fair to all participants.

Response to Arguments

Applicant's arguments with respect to claims 1-32 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Wallman, US Pat. No. 6,996,539 – auctions; allocation; predetermined conditions; and

Herschkorn, US Pat. No. 6,691,094 – auctions; allocation; predetermined conditions.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sara Chandler whose telephone number is 571-272-1186. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMC

JAGDISH N. PATEL
PRIMARY EXAMINER